



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Media Funding, Inc. d/b/a Media Visions, Inc.

**File:** B-265642; B-265642.2

**Date:** October 20, 1995

C. Joel Van Over, Esq., and Don Blevins, Esq., Swidler & Berlin, for the protester.  
James Y. Miyazawa, Esq., and Maria G. Bellizzi, Esq., Department of the Navy, for  
the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### **DIGEST**

1. Protester's interpretation of solicitation's terms as requiring offerors to possess the equipment and procedures necessary to perform the contract prior to contract award to even be considered for award is unreasonable when the solicitation is read as a whole and in a manner giving effect to all of its provisions; the only reasonable interpretation is that offerors are required to be ready to perform the contract after contract award.
2. Protest that contracting agency improperly engaged in technical leveling with all offerors except the protester is denied where the agency's second round of discussions with these offerors was spurred not by their lack of diligence, competence, or inventiveness, but by the need to receive second revised proposals after the issuance of a material amendment.

### **DECISION**

Media Funding, Inc., d/b/a Media Visions, Inc., protests the award of a contract to Video on Location, Inc. (VOLI) under request for proposals (RFP) No. N00600-95-R-0956, issued by the Department of the Navy for tape duplication, distribution and inventory control services associated with distributing a weekly Navy/Marine Corps broadcast. Media primarily argues that the solicitation's requirements are latently ambiguous.

We deny the protests.

The solicitation, issued February 15, 1995, contemplated award of a fixed-price, indefinite delivery/indefinite quantity contract for these services over 1 base year and up to two 1-year option periods. Among other things, the contractor is required to duplicate and deliver two categories of tapes under strict time frames. Priority account tapes must be delivered by 1 p.m. the day after receipt of the Navy's master

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tape, and continental United States and ship account tapes (CONUS/SHIP) must be delivered within 92 hours of receipt of the master tape. Section B of the solicitation states that performance of the contract will run from the date of award.

Offerors were advised that award would be made to the offeror submitting the lowest-priced, technically acceptable proposal. To be technically acceptable, proposals were required to include information concerning the status of the contractor's physical plant; quality, inventory, and distribution control; and key personnel, as delineated in section L.8 of the solicitation. In addition, proposals were required to meet the technical specifications listed in section C, and the minimum requirements set forth in section M.3 which paralleled those in section L.8.

Five firms submitted proposals by the March 22 closing date, including Media, the incumbent contractor. The Navy's technical evaluation team (TET) evaluated the initial proposals and found all of them unacceptable, but capable of being made acceptable through discussions. Each offeror was informed of its proposal's deficiencies and asked to address them in revised proposals.

While evaluating the revised proposals, the Navy realized that the RFP did not list the quantities or mix of tape formats in either the priority or CONUS/SHIP categories, which caused all offerors but Media, the incumbent, to make a "blind commitment."<sup>1</sup> Further, the Navy believed that the other offerors' failure to fully describe their plans to provide the required services from the date of award to the time their additional equipment became operational<sup>2</sup> was affected by the lack of this information—without knowing how many tapes would be required under the strict time frames, the non-incumbent offerors would not know that they could not meet the requirements in the interim between the date of contract award and the time their new equipment was operational. The Navy believed that these offerors did not understand that there could be no interruption of service in the event of a transition from the incumbent to a new contractor.

On June 23, amendment No. 0004 was issued to provide all offerors with the current mix of tape formats and quantities for both the priority and CONUS/SHIP

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<sup>1</sup>The RFP generally listed several tape formats, including 3/4" videotapes, 1/2" VHS videocassettes, standard 8 millimeter cassettes, and 1/2" BetaMax videocassettes. According to the Navy, the lack of information concerning the quantity and mix of tape formats for the two tape categories had not previously been an issue because the broadcast had always been duplicated and distributed by the incumbent offeror, Media.

<sup>2</sup>Most of the offerors planned to install new equipment.

categories. In addition, the amendment stated that a 2-week transition period from the date of award would be allowed: "the contractor shall be ready to perform all of the requirements of the solicitation on the 15th calendar day after award."

All four non-incumbent offerors were informed of the deficiencies in their proposals and asked to submit second revised proposals. Because Media's proposal was technically acceptable and had no proposal deficiencies, it was not advised of any and was not asked to submit a revised proposal. All four second revised proposals were found technically acceptable, and all offerors, including Media, were asked to submit best and final offers (BAFO), all of which were found technically acceptable. VOLI submitted the lowest-priced offer of \$835,352 and was awarded the contract on July 27. Media, which submitted the highest-priced offer, subsequently filed these protests.

Media argues that it interpreted the solicitation to require offerors to possess the equipment and procedures necessary to perform the contract prior to contract award in order to even be considered for award. The protester contends that the Navy improperly relied upon amendment No. 0004 to alter this requirement because, to the extent that the amendment did so, it did so in a latently ambiguous manner. Media asserts that the effect of this latent ambiguity was an improper relaxation of the solicitation's requirements.

Specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. Essex Electro Eng'rs, Inc., B-252288.2, July 23, 1993, 93-2 CPD ¶ 47. When a dispute exists as to the actual meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Sea-Land Serv., Inc., B-246784.2; Aug. 24, 1992, 92-2 CPD ¶ 122, aff'd, B-246784.4, Feb. 17, 1993, 93-1 CPD ¶ 147. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. Pulse Elecs., Inc., B-243769, Aug. 2, 1991, 91-2 CPD ¶ 122. In our view, Media's interpretation of the solicitation, both before and after the issuance of amendment No. 0004, is unreasonable. As discussed below, the only reasonable interpretation of the solicitation is that offerors were required to be ready to perform the contract after award.

In support of its interpretation, Media largely relies upon its quotation of entire sections of the solicitation with little comment or analysis.<sup>3</sup> These sections, however, are not reasonably susceptible to the interpretation Media urges. For

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<sup>3</sup>Media also repeatedly asserts that the Navy intended the solicitation to be read as the protester suggests, but the documents to which it refers do not in any way support this assertion.

example, the first of these, section L.8, as amended, requires offerors to describe the status of their physical plant, but section C.2 of the RFP specifically allows offerors to establish this facility after contract award.<sup>4</sup> Offerors also must discuss their quality control, inventory control, and distribution control procedures, including procedures currently in-place and those that will be implemented specifically for this contract, but there is no requirement that offerors possess any particular procedures prior to contract award. Finally, while offerors must provide resumes for all of their proposed key personnel, they are not required to have these personnel in their employ prior to award.

Another quoted provision, section M.3, lists a number of minimum requirements that a proposal must meet all of which parallel section L.8's requirements. Offerors must show a clear understanding of the required services; propose acceptable quality control, inventory control, and distribution control procedures to perform the required services; propose personnel meeting the requirements; and propose an acceptable facility as specified in section C.2 and equipment necessary to perform the required services.

None of these minimum requirements, however, mandates that an offeror possess the necessary equipment or procedures prior to contract award. Given section B's statement that performance will run from the date of contract award, and the strict time frames listed in section C, the most the solicitation required--prior to the issuance of amendment No. 0004--was that offerors possess the equipment and procedures necessary to perform the contract shortly after contract award.

As a result, Media should have been on notice prior to the issuance of amendment No. 0004, that offerors that were not existing commercial videotape duplicators could successfully compete for this contract provided they proposed sufficient equipment, procedures, facilities, and personnel to perform the contract. Amendment No. 0004, which provided that contractors "shall be ready to perform all of the requirements of the solicitation on the 15th calendar day after award,"

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<sup>4</sup>Section C.2 states that the contractor's facility in which the significant portion of the work will be performed must be located within a 1-hour commute to the Naval Media Center in Washington, D.C. However, contractors located beyond this commuting time could submit a letter of intent to establish such a facility so long as that letter stated the offeror's anticipated date--in terms of days after contract award--for establishing such facility, the geographic location, commuting time, and description of the facility.

unambiguously extended that time period.<sup>5</sup> We fail to see any latent ambiguity in this solicitation.

Media also argues that the Navy improperly allowed technical leveling to occur by entering into the second round of discussions and receiving second revised proposals.

Technical leveling occurs when an agency helps to bring one proposal up to the level of other proposals through successive rounds of discussions by pointing out inherent weaknesses remaining in an offeror's proposal due to the offeror's lack of diligence, competence, or inventiveness after the offeror has been given an opportunity to correct those deficiencies. Federal Acquisition Regulation (FAR) § 15.610(d); Quintron Sys., Inc., B-249763, Dec. 16, 1992, 92-2 CPD ¶ 421. Because of the varying degree of weaknesses or deficiencies in proposals, it is proper for an agency to conduct appropriately different discussions with each offeror. TRS Design & Consulting Servs., B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168. When the requirements stated in a solicitation change or require significant clarifications, a procuring agency should reopen discussions and permit offerors to revise their proposals. FAR § 15.606; Quintron Sys., Inc., *supra*; General Eng'g Serv., Inc., B-242618.2, Mar. 9, 1992, 92-1 CPD ¶ 266.

Here, however, it is clear that the second round of discussions was necessary to allow offerors to respond to the critical information provided by amendment No. 0004, and was not intended to permit offerors to improve proposals that were deficient because of their "lack of diligence, competence or inventiveness." Therefore, there was no technical leveling. Quintron Sys., Inc., *supra*.

The protests are denied.

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of the United States

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<sup>5</sup>Since we find that Media's interpretation of the pre-amendment No. 0004 solicitation is unreasonable, no purpose would be served in addressing its argument that the amendment did not alter that interpretation.